



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/581,634

02/26/2007

Toshiya Okahisa

1091-0002WOUS

3850

49698 7590 12/18/2009

MICHAUD-Kinney Group LLP
306 INDUSTRIAL PARK ROAD
SUITE 206
MIDDLETOWN, CT 06457

EXAMINER

DESAI, KAUSHIKKUMAR A

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

12/18/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,634	Applicant(s) OKAHISA, TOSHIYA	
	Examiner KAUSHIKKUMAR DESAI	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 4-9, 13, 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06/1/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>6/1/06; 7/2/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's election without traverse of species I in the reply filed on 08/21/2009 is acknowledged.
2. Claims 4, 5, 7-9, and 13 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. Claims 1 and 10 are generic claims.

Applicant further state that claims 2, 6, 11, 12 and 14 are generic. A generic claim should require no material element additional to those required by the species claims, and each of the species claims must require all the limitations of the generic claim. MPEP 806.04 (d). Claim 2 (container folded in two) does not read on Species VI. Similarly, claim 6 (hung mode) does not read on species I. Claim 11 (caution member) does not read on species VI. Claim 12 (caution member ...drops by the opening) does not read on species VI. Claim 14 (control member) does not read on species I.

The requirement is still deemed proper and is therefore made FINAL.

Claims 6 and 14 are further withdrawn from consideration, as they do not read on elected species I, claimed "control member" is not part of the elected species I.

Specification

3. The disclosure is objected to because of the following informalities: Specification (02/26/2007) page 4 line 24, portion by the expanding. Line 25, recover by the expanding. Line 26, drop by the expanding. Line 27, portion by the hanging. Delete "the" from these lines.

Appropriate correction is required.

Art Unit: 3728

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claims 14 recite "a control member", which is not described in the specification.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3, 10, 12 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1-3 and 10 use the phrase "wherein" which constitutes a use limitation and thus renders the claims indefinite as to what structure is embraced by the metes and bounds of the claim language. MPEP 2106 II C. Claim 12 recite "drops by the opening". Applicant has failed to define what and how it

drops and by opening what, this makes scope of the claim indefinite. Claims 14 recite “a control member”, which is not defined in the specification.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by US PG PUB 2002/0029985 to Stunnell.

As to claim 1, Stunnell discloses a multi-chamber container [1, fig 1] that accommodates a plurality of agents [23, 24], comprising: a plurality of filling chambers [10 and 11] to fill agents; a communication portion [15 at 17] that is provided in at least one of the filling chambers to cause the filling chambers to be communicated with one another; and an opening preventing portion [16, fig 1] that closes the communication portion in a carrying mode of the multi-chamber container, wherein the filling chambers are opened [fig 12] in there between via the communication portion by user's operation in the carrying mode of the multi-chamber container to a use mode of the multi-chamber container.

As to claim 2, Stunnell discloses the carrying mode of the multi-chamber container is a mode folded in two [fig 1], and the filling chambers are opened [fig 12] in there between via the communication portion [15] by expanding the multi-chamber container in the mode folded in two. It is noted that the claims are directed to apparatus which must be distinguished from the prior art in term of structure rather than function. Hence, the functional limitations “wherein the carrying mode of the multi-chamber

container is a mode folded in two, and the filling chambers are opened in there between via the communication portion by expanding the multi-chamber container in the mode folded in two” which are narrative in form have been given little patentable weight. In order to be given patentable weight, a functional recitation must be supported by the recitation in the claim of a sufficient structure to warrant the presence of the functional language. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP 2114.

As to claim 3, Stunnell discloses the opening preventing portion [16] is a seal to peel off the communication portion [15] by the expanding [para 0066].

As to claim 10, Stunnell discloses a multi-chamber container [1, fig 1] that accommodates a plurality of agents [23 and 24], comprising: a plurality of filling chambers [10 and 11] to fill agents; a communication portion [15] that is provided in at least one of the filling chambers to cause the filling chambers to be communicated with one another; an opening preventing portion [16] that closes the communication portion in a carrying mode of the multi-chamber container [fig 1]; and an opening portion that opens between the filling chambers via the communication portion [15] by user's operation in the carrying mode of the multi-chamber container to a use mode of the multi-chamber container [para 0066].

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3728

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 11 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Stunnell as applied to claim 10 above, and further in view of US PG PUB 2004/0188281 to Iwasa et al..

As to claim 11, Stunnell discloses the claimed invention except a caution member to check opening between the filling chambers. Iwasa teaches a caution member [352, fig 12]. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide Stunnell's multi-chamber container with caution member as taught by Iwasa to caution about / provide important information to the customer. "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int 'l v. Teleflex Inc.*, 127 S.Ct. 1731, 82 USPQ2d at 1396.

As to claim 12, Stunnell modified in view of Iwasa discloses the caution member is attached to near the communication portion [3, fig 12], and drops by the opening. It is noted that the claims are directed to apparatus which must be distinguished from the prior art in term of structure rather than function. Hence, the functional limitations "and drops by the opening" which are narrative in form have been given little patentable weight. In order to be given patentable weight, a functional recitation must be supported by the recitation in the claim of a sufficient structure to warrant the presence of the functional language. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997). MPEP 2114.

Conclusion

11. Prior Art not relied upon: See attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR DESAI whose telephone number is (571)270-7290. The examiner can normally be reached on Monday- Friday 7:00 AM - 4:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571-272-4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/K. D./
Examiner, Art Unit 3728
Friday, December 11, 2009

/Ehud Gartenberg/

Supervisory Patent Examiner, Art Unit 3728